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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Vitalix S.A. DE C.V.,)	CV 10-00556 RSWL (RCx)
)	
)	
Plaintiff,)	ORDER re: Defendants'
)	Motion to Dismiss
)	
v.)	[28]
)	
)	
Grupo Carossi Sociedad)	
Anonima et al.,)	
)	
<u>Defendants.</u>)	

Defendants' Motion to Dismiss Plaintiff's First Amended Complaint for Failure to State a Claim, pursuant to Rule 12(b)(6), was set for hearing on June 8, 2010. Having taken the matter under submission on June 7, 2010, and having reviewed all papers submitted pertaining to this motion, the Court **NOW FINDS AND RULES AS FOLLOWS:**

Defendants' Motion to Dismiss is **GRANTED** with leave to amend. Plaintiff's First Amended Complaint fails to

1 present facts sufficient to support that the Florida
2 Defendants directly infringed on Plaintiff's copyright.
3 Copying, an element of direct copyright infringement,
4 may be established by showing that the works in
5 question are "substantially similar in their protected
6 elements" and that the infringing party had access to
7 the copyrighted work. Metcalf v. Bochco, 294 F.3d
8 1069, 1072 (9th Cir. 2002). Plaintiff alleged that the
9 videos are substantially similar, but this was merely a
10 recitation of the element, lacking factual support.

11 Plaintiff's First Amended Complaint also fails to
12 present facts sufficient to support that the
13 Broadcasting Defendants are liable for vicarious
14 copyright infringement. To state a claim for vicarious
15 copyright infringement a plaintiff must allege that the
16 defendant had (1) the right and ability to supervise
17 the infringing activity, and (2) a direct financial
18 interest in the infringing activity. A&M Records, Inc.
19 v. Napster, Inc., 239 F.3d 1004, 1022 (9th Cir. 2001).
20 Plaintiff alleged that the Broadcasting Defendants had
21 the ability to deny the Florida Defendants' request to
22 broadcast the Offending Videos, but this does not
23 amount to the right and ability to supervise the
24 infringing activity.

25 Accordingly, for the foregoing reasons, the Court
26 **GRANTS** Defendants' Motion to Dismiss Plaintiff's First
27 Amended Complaint for Failure to State a Claim, with
28 leave to amend.

1 Plaintiff shall file its Amended Complaint no later
2 than 20 days from the entry of this order.

3
4 DATED: June 25, 2010

5 **IT IS SO ORDERED.**

6
7 RONALD S.W. LEW
8

HONORABLE RONALD S.W. LEW
Senior, U.S. District Court Judge
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